

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

No. CR-11-0184-EFS

Plaintiff,

ORDER DENYING USAO'S MOTION TO  
RECONSIDER

5

SIAOSILEPELENISE L. TUAIMALO,

Defendant.

12 Before the Court, without oral argument, is the U.S. Attorney's  
13 Office's (USAO) Motion to Reconsider, ECF No. 209, in which the USAO  
14 asks the Court to revisit its decision to grant Defendant  
15 Siaosilepelenise L. Tuaimalo's Motion to Exclude Justin Beaudry as a  
16 Witness at Trial, ECF No. 204. Defendant's motion sought to exclude  
17 Mr. Beaudry because the USAO did not disclose Mr. Beaudry's existence  
18 or its intent to call him as a trial witness until February 13, 2013,  
19 six days before trial. As Defendant correctly observed, the Court  
20 instructed the USAO to "disclose its witness list for trial to the  
21 Defendant no less than ten (10) days prior to trial." ECF No. 35, at  
22 2. The Court granted Defendant's motion to exclude Mr. Beaudry based  
23 on the USAO's failure to comply with this deadline. The USAO now  
24 seeks reconsideration of that ruling.

ORDER DENYING USAO'S MOTION TO RECONSIDER - 1

1       The Court's authority to exclude Mr. Beaudry as a trial witness,  
2 whether characterized as the enforcement of its August 28, 2012 Order,  
3 ECF No. 35, or as a sanction for the USAO's non-compliance with that  
4 Order, falls soundly within the Court's discretion. See *United States*  
5 v. *W.R. Grace*, 526 F.3d 499, 514-516 (9th Cir. 2008). The Ninth  
6 Circuit has unequivocally upheld the authority of a district court "to  
7 manage its docket in enforcing a valid pretrial discovery order,"  
8 particularly in the context of excluding witnesses for untimely  
9 disclosure in violation of a case management order. *Id.* at 516. The  
10 USAO relies on 18 U.S.C. § 3500 in contending that Defendant's right  
11 to due process was not violated, suggesting that the disclosure of Mr.  
12 Beaudry to Defendant was sufficiently before trial to be "useful."  
13 However, this argument misses the mark. The Court's decision to  
14 exclude Mr. Beaudry was not based on a violation of Defendant's right  
15 to due process but rather the USAO's unjustified violation of the  
16 Court's pretrial discovery order.

17       Turning to the instant motion for reconsideration, the Court  
18 still finds no justification to reverse its prior ruling. The USAO  
19 asserts that it made "several unsuccessful attempts" to identify and  
20 contact Mr. Beaudry, and that its efforts were hampered by witnesses  
21 who provided false information. The USAO indicates that "[o]nce the  
22 true identity [of Mr. Beaudry] was determined, time was needed to  
23 contact [him] and arrange for his appearance to confirm he was  
24 actually the person [being sought]." ECF No. 209, at 2-3. These  
25 assertions lack detail. At a bare minimum, the Court cannot determine  
26 how or when the USAO learned of Mr. Beaudry's true identity, much less

1 the nature and extent of its unsuccessful efforts to do so prior to  
2 the witness-disclosure deadline. Based on the submitted materials,  
3 the Court cannot find good cause to excuse the USAO's failure to  
4 comply with that deadline. For that reason, the USAO's Motion to  
5 Reconsider, **ECF No. 209**, is **DENIED**.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
7 Order and provide copies to all counsel.

8 **DATED** this 19<sup>th</sup> day of February 2013.

9 s/Edward F. Shea

10 EDWARD F. SHEA

11 Senior United States District Judge

12

13

14

15

16

17

18

19

20

21

22

23 Q:\EFS\Criminal\2011\184.reconsider.deny.lc2.docx

24 ORDER DENYING USAO'S MOTION TO RECONSIDER - 3

25

26